

Copyright Exceptions & Limitations: *Libraries & Services*



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Three Main Points



- **ONE:**
 - *Copyright Exceptions for Libraries are fundamental to the law of most countries.*
- **TWO:**
 - *Most countries in the Region have exceptions for preservation, and often for research & study.*
- **THREE:**
 - *Few countries have moved beyond those issues, and several still have no library exception.*

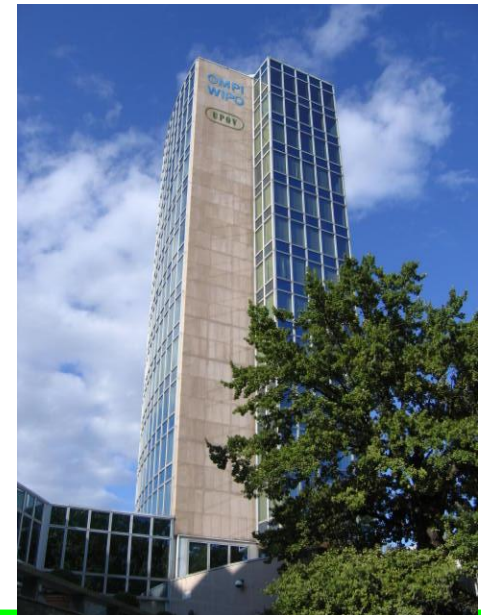
Libraries and Copyright

- **Similarity of Mission**
 - *Libraries:* To Preserve and Provide Access to Information Resources
 - *Copyright:* To Encourage the Creation and Dissemination of New Works
- **Library Services and Copyright**
 - Reproduction and Distribution
 - Displays and Performances
 - Derivative Works



Context of Exceptions

- **Structure of Copyright Law**
 - Grants Right to Owners
 - Subject to Limitations & Exceptions
- **Multinational Treaties & Agreements**
 - Berne & WIPO Copyright Treaty
 - WTO and TRIPs
- **Regional Agreements**
 - Andean Community (*4 countries*)
 - Preservation & Replacement
- **Subject to the Three-Step Test**



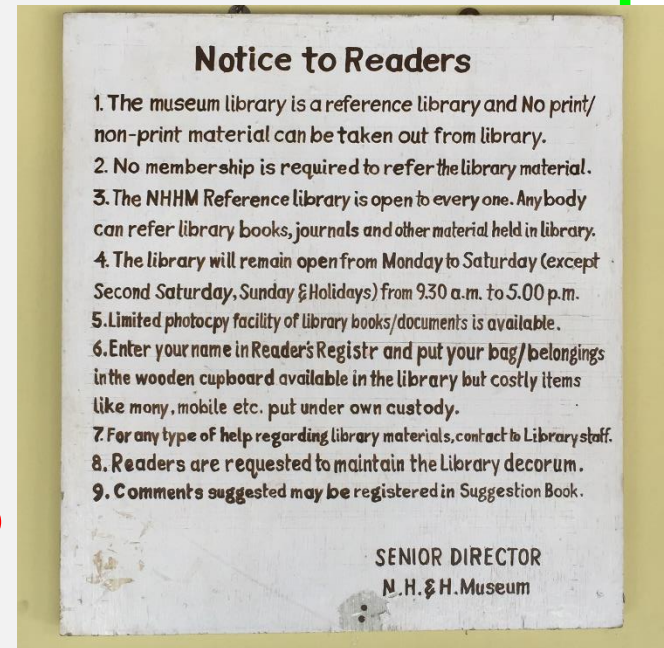
Berne: *Three-Step* Test



Article 9(2): “It shall be a matter for legislation in the countries of the Union to **permit the reproduction** of such works in **certain special cases**, provided that such reproduction does **not conflict with a normal exploitation** of the work and does **not unreasonably prejudice the legitimate interests of the author.**”

Copyright, Libraries, and SCCR

- **First Study of E&Ls for Libraries and Archives:**
 - SCCR/17 – November 2008
 - Report: <http://bit.ly/1tB8ryb>
 - 149 Member States
- **Most Recent Study:**
 - **SCCR/35** – November 2017
 - Report: <http://bit.ly/2htmCf6>
 - **191** Member States



Four Types of Library Exceptions

- **Type 1: No Library Exception**
 - Plus two Member States with no General © Law
- **Type 2: General Library Exception**
 - Some diversity about applicable libraries and works within the scope.
- **Type 3: Specific Library Exceptions**
 - High diversity of statutes
 - Trend toward following models
- **Type 4: Anti-circumvention Exemptions**

Type 2: General Library Exception

- **Tunis Model Act (UNESCO 1976):**

“the reproduction, by photographic or similar process, by **public libraries**, non-commercial documentation centers, scientific institutions and educational establishments, of **literary, artistic or scientific works** which have already been lawfully made available to the public, provided that such reproduction and the number of copies made are **limited to the needs of their activities**, do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author...”

Type 2: General Library Exception

- **Elements of the Tunis General Exception:**
 - “limited to the **needs of their activities**”
 - “public libraries, non-commercial documentation centers, scientific institutions and educational establishments”
 - “the reproduction, by photographic or similar process”
 - “literary, artistic or scientific works which have already been lawfully made available to the public”
 - “do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author”

Type 3: Specialized Exceptions

- **Preservation and Replacement**
- **Private Study and Research**
- **Making Available on Dedicated Terminals**
- **Document Delivery & Interlibrary Loans**
- **Needs of Persons with Disabilities**
- **Orphan Works**
- **Limitations on Liability**
- **Technological Protection Measures**
 - **Exemption for Libraries (Type 4)**

Type 3: Diversity of Exceptions

- ***Who*** may Use the Exception?
 - *Libraries? Archives? Museums? More?*
- ***What*** may be Copied?
 - *All Works? Short Works? Published Works?*
 - *Specific types of Works? Music? Film? Software?*
- ***When*** may it be copied?
 - *Physical Damage? Lost? Deteriorating?*
 - *Not on the Market? Proof of Market and Use?*
- ***Why*** may it be copied?
- ***How*** – *Analog or Digital? Reprographic?*

Type 2: General Library Exception

- **Elements of the Tunis General Exception:**

Who: “public libraries, non-commercial documentation centers, scientific institutions and educational establishments”

What: “literary, artistic or scientific works which have already been lawfully made available to the public”

When: “do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author”

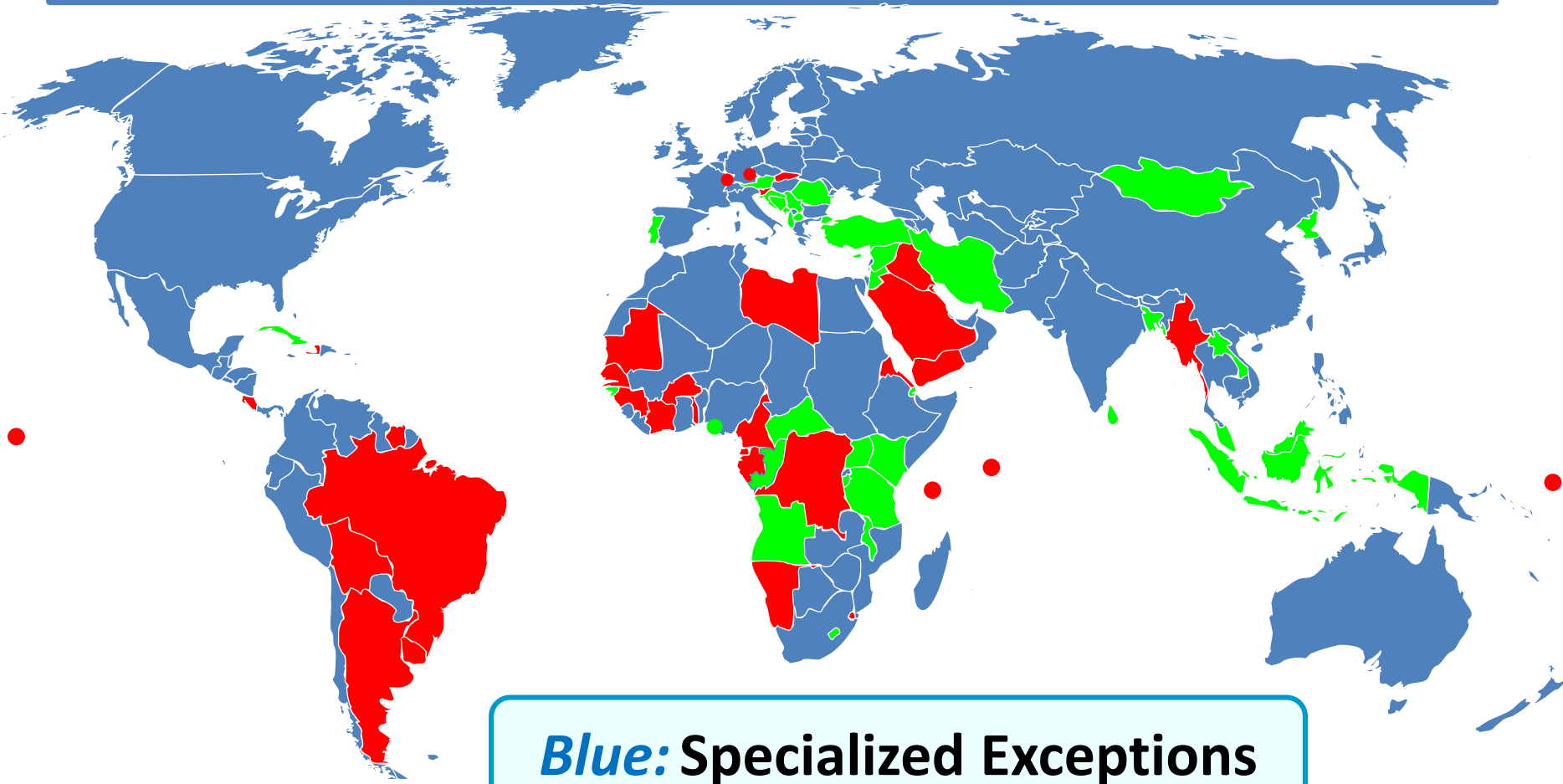
Why: “limited to the **needs of their activities**”

How: “the reproduction, by photographic or similar process”

Library Exceptions: Latin America & Caribbean

- ***Little Reliance on General Exception***
- ***Strong Reliance on UK Copyright Act***
 - ***Caribbean Region***
- ***Principal Focus on:***
 - ***Preservation & Replacement***
 - ***Research & Private Study***
- ***Several Countries with NO Library Exception***
- ***Limited Innovation in Statutes***

Red: No Library Exception
Green: General Exception Only
(2017 Study)



Blue: Specialized Exceptions

Type 1: *No Library Exception* (6)

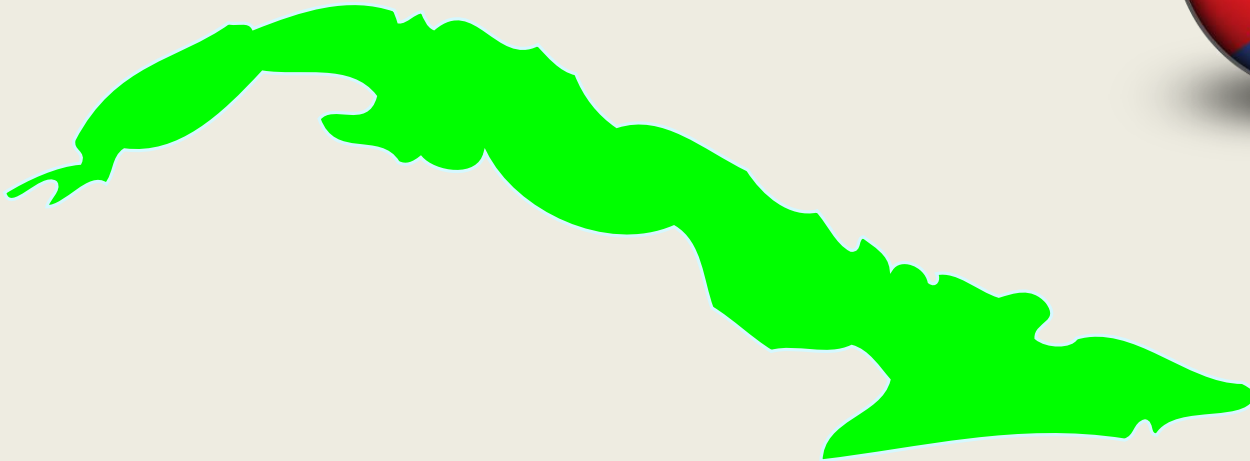
Argentina
Bolivia
Brazil
Costa Rica
Suriname
Uruguay



Thanks to *David Ramírez-Ordóñez* for the map!

Type 2: *General Library Exception (1)*

Cuba



Type 3: Specialized Library Exception

Antigua & Barbuda

Bahamas

Barbados

Belize

Guyana*

Jamaica

St. Kitts & Nevis

Saint Lucia

St. Vincent & the

Grenadines

Chile

Colombia

Dominica

Dominican

Republic

Ecuador

Grenada

Haiti

Trinidad &

Tobago

El Salvador

Guatemala

Honduras

Mexico

Nicaragua

Panama

Paraguay

Peru

Venezuela

Type 3: Specialized Library Exception

**Copyright Statutes
derived directly from
the UK Copyright Act
of 1988
(*Caribbean countries*)**

Antigua & Barbuda

Bahamas

Barbados

Belize

Guyana*

Jamaica

St. Kitts & Nevis

Saint Lucia

St. Vincent & the Grenadines

(*1956 Act)

Type 3: Specialized Library Exception

Library Exceptions for:

- **Preservation *and***
- **Research & Study**
(*Caribbean & Latin Amer.*)

Chile

Colombia

Dominica

Dominican Republic

Ecuador

Grenada

Haiti

Trinidad & Tobago

Type 3: Specialized Library Exception

Library Exceptions for:

- **Preservation**
(Latin America)

El Salvador
Guatemala
Honduras
Mexico
Nicaragua
Panama
Paraguay
Peru
Venezuela

Type 3: Specialized Exceptions

- **Making Available on Dedicated Terminals**
 - Chile, Colombia, Ecuador
- **Document Delivery & Interlibrary Loans**
 - British Copyright Act (*9 Caribbean countries*)
 - Colombia, Dominican Republic
- **Orphan Works**
 - Colombia, Ecuador (*new provisions*)
- **Limits on Liability**
 - Bahamas, Ecuador, Guatemala
- **Technological Protection Measures**
 - 19 countries have TPM; 7 have library exemptions

For Further Consideration

- **Priority**

- Library Exceptions enacted in Most Countries
- Preservation of Culture; Access to Information

- **Opportunity**

- Growth of Digital Technologies
- Expansion of Library Services

- **Innovation**

- Digital Applications & International Exchange

**Copyright Exceptions &
Limitations:
*Libraries & Services***

Thank You!



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